IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-06-2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

WRIT PETITION No.22400 OF 2004

K.Jayakodi ...Petitioner

-vs-

1.The Chief General Manager,
Telecom,
Bharat Sanchar Nigam Limited,
Office of the Chief General Manager,
Telecom, Tamil Nadu Circle,
Chennai-2.

2.The Divisional Engineer (M),
Bharat Sanchar Nigam Limited,
Arni-632 301.

3.The Sub Divisional Engineer (Phones),
Bharat Sanchar Nigam Limited,
Office of the SDE Phones,
Arni - 632 301. ...Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records of the 3rd respondent relating to his proceedings in No.X2/punishment/KJ/2000-02/35, dated 23.04.2002, as confirmed in appeal by the 2nd respondent in No.X3/appeal/DE Arni/2000-2003/9/dated 21.6.2002 and modified by the 1st respondent in No.DIS/37/121/2002, dated 02.04.2004, and quash the same.

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For petitioner : Mr.N.Chandra Raj

For respondents : Mr.K.Kannan,
SCGSC.

O R D E R

Petitioner was appointed as Mazdoor on 06.03.1982. He was promoted as Lineman on 18.10.1984 and was later made as Store Lineman with effect from 1993. While functioning as Store Lineman, he was served with a Memo on 29.02.1996 by the Sub-Divisional Officer, Telecom, asking for his explanation for the shortage of items in stores. By reply dated 05.03.1996, the petitioner denied the contents of the memo. On 06.03.1996, he was placed under suspension. On 15.07.1996, a Charge Memo was served on him, regarding misappropriation of stores. An Inquiry Officer was appointed to inquire into the charges and, by a report, dated 14.03.2002, the Inquiry Officer found all the three charges levelled against the petitioner, as proved.

2. Based on the report of the Inquiry Officer, the disciplinary authority, namely, third respondent herein imposed an order of dismissal from service on 23.04.2002, which was confirmed in appeal by the second respondent on 21.06.2002. Thereafter, in the revision petition, dated 15.07.2002, preferred by the petitioner to the first respondent, the order of dismissal was modified into one of compulsory retirement, vide order dated 02.04.2004.

3. Aggrieved over the said orders of respondents 1 to 3, the petitioner has filed this Writ Petition.

4. Respondents filed a counter, stating, that while functioning as Store Lineman from 15.07.1993 to 06.03.1996, the petitioner misappropriated the stores of SDOT, Arni, worth Rs.5,43,674/-, by removing them without proper sanction. He also misappropriated the stores by not bringing the same worth Rs.1,58,118/-issued by SDOT, Vellore, to SDOT, Arni, in addition to making false entries in the stores issue slips, issued by the SDOT, Arni, worth Rs.70,528/-, and since the charges levelled against the petitioner are proved, the petitioner was dismissed from service initially and, thereafter, made to retire compulsorily and, therefore, this Writ Petition is liable to be dismissed.

5. Learned counsel for the petitioner would contend that though the petitioner had sought for certain documents to substantiate his claim, they were not afforded to the petitioner and mere production of certain documents does not amount to proof and the same has to be proved by witnesses, which is not done in this case. The learned counsel would

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further contend that though the petitioner requested the Inquiry Officer to permit him to examine the three additional witnesses, the same was rejected and he was not given a reasonable opportunity, which is violative of the principles of natural justice, and he was made a scapegoat to save the skin of his superiors, and, therefore, the orders impugned are liable to be quashed.

6. Conversely, learned counsel for the respondents would contend that the contention of the petitioner that he sought for certain documents to substantiate his claim is not true, as he has not asked for any documents in his reply, dated 16.08.1996, to the charge sheet; in the hearing held on 06.06.2001, the petitioner neither objected to the introduction of the documents, when they were produced by the Presenting Officer, nor raised any objection to the genuineness of the same and hence they have been admitted as State Exhibits; the defence witnesses, requisitioned by the petitioner, were allowed by the Inquiry Officer and examined during the enquiry held on 07.06.2001 and the demand for allowing three more defence witnesses was made only after the closure of the case of the prosecution side and hence it was turned down by the Inquiry Officer, for which the reasons are also given in the daily order; the petitioner was given due opportunity to defend himself; there is no violation of principles of natural justice; the orders passed by the respondents are in accordance with law and, therefore, there is no scope for quashing the same.

7. It is further vehemently contended by the learned counsel for the respondents that at the time of passing the impugned orders by the disciplinary authority, the appellate authority and the revisional authority, the petitioner was under the control of the Department of Telecom, that too even before the exercise of option to be absorbed with BSNL; the remedy for the petitioner is only before the Central Administrative Tribunal and, therefore, this Writ Petition is not maintainable.

8. I have heard the learned counsel for the parties and also given my thoughtful consideration to the rival contentions.

9. No doubt BSNL is a Corporation. Therefore, Writ Petition can be entertained by this Court. But, in this case, the impugned proceedings up to the stage of revision reached finality, when the petitioner was an employee of the Telecom Department. Therefore, this Court is left with no other option except to direct the petitioner to approach the Central Administrative Tribunal, which is the competent forum, to agitate his grievance.

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10. In such view of the matter, I am not inclined to traverse on any of the merits and demerits of the case, as this Court is not the appropriate forum to decide the issue in this Writ Petition. Instead, I direct the petitioner to approach the Central Administrative Tribunal, for adjudication of the matter. The period in which this Writ Petition is pending is to be excluded for the filing of the Original Application before the Tribunal.

11. With the above direction, this Writ Petition is dismissed. No costs.

dixit

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1.The Chief General Manager,
Telecom,
Bharat Sanchar Nigam Limited,
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2.The Divisional Engineer (M),
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Arni-632 301.

3.The Sub Divisional Engineer (Phones),
Bharat Sanchar Nigam Limited,
Office of the SDE Phones,
Arni - 632 301.

+1 cc to Mr.K.Kannan, S.C.G.S.C.Advocate Sr.No.33769.

+1 cc to Mr.N.Chandra Raj, Advocate Sr.No.33577.

AKR(CO)
dcp/25.6.07

W.P.No.22400 OF 2004

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